

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

JUNE 20, 2007

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| Meeting | Chairman Ron Poff called this meeting of the Tipp City Board of Zoning Appeals to order at 7:32 p.m. |
| Roll Call | <p>Roll call showed the following Board Members present: Ron Poff, John Borchers, Alan Rodrigues, Dan Naas, and Stacy Wall. Others in attendance: Assistant City Manager/Community & Economic Development Director Bradley C. Vath, and Board Secretary Kimberly Patterson.</p> <p>Citizens signing the register: Terry Blair, Betty Peachey, Paul Lee and Kathy Lee.</p> |
| Board Minutes 5-16-07 | Chairman Poff asked for discussion. Mrs. Wall moved to approve the May 16, 2007 minutes as written , seconded by Mr. Borchers. Motion carried. Ayes: Wall, Borchers, Poff, and Naas. Nays: None. Mr. Rodrigues abstained from the vote. |
| Citizen Comments | There were no citizen comments on items not on the agenda. |
| Administration of Oath | Mrs. Patterson, notary, swore in citizens wishing to speak and to Mr. Vath. |
| New Business | <p>Case No. 06-07: Paul Lee - 17 N. Fourth Street, Tipp City - Inlot: Inlot 4035 – The applicant requested four variance requests:</p> <ol style="list-style-type: none">1. A variance of 6,252 square feet to the minimum lot area noted in Code §154.122(B)(35)(a).2. A variance of 32.94 feet to the minimum lot width noted in Code §154.122(B)(35)(b).3. A variance of 1.95 feet to the minimum side yard setback noted in Code §154.122(B)(35)(e) for the southern side yard setback.4. A variance of 3.83 feet to the minimum side yard setback noted in Code §154.122(B)(35)(e) for the northern side yard setback. <p>Present Zoning District: R-2 – Urban Residential Zoning District Section(s): §154.122(B)(35)</p> <p>Mr. Vath stated that the applicant seeks to convert the current single-family unit located at 17 N. Fourth Street into a two-family dwelling unit. A two-family dwelling unit is a Special Use in the R-2 – Urban Residential Zoning District as noted in Code §154.044(B)(2)(b) and is subject to review and regulation in accordance with Code §154.120 - §154.122.</p> <p><u>Variance #1</u> Code §154.122(B)(35)(a) states: <i>Minimum lot area shall be 11,000 square feet.</i></p> <p>The lot in question contains 4,748 square feet ($11,000 - 4,748 = 6,252$).</p> <p><u>Variance #2</u> Code §154.122(B)(35)(b) states: <i>Minimum lot width shall be 80 feet.</i></p> |
| Case No. 06-07: Paul Lee 17 N. Fourth ST. Four Variance Requests | |

The width of the lot in question is 47.06'. ($80 - 47.06 = 32.94$).

Variance #3

Code §154.122(B)(35)(e) states:

Minimum side yard width on each side shall be 10 feet.

The southern side yard of the lot in question is 8.05' ($10 - 8.05 = 1.95$).

Variance #4

Code §154.122(B)(35)(e) states:

Minimum side yard width on each side shall be 10 feet.

The northern side yard of the lot in question is 6.17' ($10 - 6.17 = 3.83$).

Mr. Vath went over the Procedural Requirements and Standards regarding the denial of the first two variance requests:

Variance #1

Staff noted the Board of Zoning Appeals **DID NOT** have jurisdiction to grant variance # 1 as requested. Code §154.175(E)(2) states in no event shall the respective area and width of the lot or lots be less than 80% of the required area and width;

Mr. Vath noted that the BZA was **prohibited by code** to grant the requested variance, with the maximum possible variance grantable by the BZA being 2,200 square feet. ($80\% \text{ of } 11,000 = 8,800$) and ($11,000 - 2,200 = 8,800$).

Variance #2

Staff noted the Board of Zoning Appeals **DID NOT** have jurisdiction to grant variance # 2 as requested. Code §154.175(E)(2) states in no event shall the respective area and width of the lot or lots be less than 80% of the required area and width;

Mr. Vath noted that the BZA was **prohibited by code** to grant the requested variance, with the maximum possible variance grantable by the BZA being 16 feet. ($80\% \text{ of } 80 = 64$) and ($80 - 64 = 16$).

Mr. Vath explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Vath stated the requirement of Section §154.150(D), which states:

"The Board shall further make a written finding that the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum variance that will make possible the reasonable use of the property. When a variance is denied, a written statement shall set forth the reason(s) therefore.

Mr. Vath noted the following regarding the requests:

- On September 20, 2006 the parcel located at 17 & 25 N. Fourth Street was subdivided into two (2) Inlots of record being:
17 N. Fourth Street Inlot 4035 0.109 acres ($\pm 47.06' \times 100.66'$)
25 N. Fourth Street Inlot 4034 0.125 acres ($\pm 54.04' \times 100.57'$)
- On May 16, 2007 the BZA granted a variance to the applicant for one (1) off-street parking space as noted in Code §154.078(A)(1) in

conjunction with the expansion of the off-street parking area located at 17 N. Fourth Street required for the conversion of the premises into a two-family dwelling unit.

Mr. Vath reminded the Board that in accordance with code, the Board was prohibited to grant variances one and two requested, but did have the ability to grant variances three and four.

Mr. Vath read the following citizen's comment regarding the case which was forwarded via e-mail from Staff: "He does not think he can attend next Wednesday. As long as what Mr. Lee does is in good taste, he has no objections. If he is able he will try to attend."

Board Members found that the Board had a statutory authority to go to a certain percentage on variance requests one and two and that the requests were beyond that percentage. The Board could grant to that percentage but it wouldn't go far enough to meet the applicant's needs and would also have to be appealed to City Council for the remainder if the applicant wanted to move forward with the requests. Being prohibited by code to grant the full variance requests for one and two, granting up to the percentage would not be helpful.

Mr. Lee, 152 W. Franklin Street, Tipp City, asked Staff that when the lot size was changed, approved by City Council, special provisions were made when the lots were split, and Mr. Lee inquired if the provisions would have any effect on his variance requests one and two. Mr. Vath stated he would look into the matter.

Mr. Lee updated the Board regarding a question a neighbor had with the right-of-way on the lot. Mr. Lee stated that he had been working with Mr. Spring and the neighbor regarding this matter, and after due diligence with the title office it was found that the neighbor's right-of-way was actually on the neighbor's property directly east. The neighbor had since built a garage and placed a telephone pole in that right-of-way, which was 12' on the north end. Mr. Lee stated that the neighbor actually uses a part of Mr. Lee's property (not legally), but they have worked through the issues.

Mr. Vath found that Zoning Code Sections §154.175(E)(11) states:

To permit through the minor subdivision of a single lot of record, and where the single lot is residentially zoned, and where two or more principal buildings were constructed prior to the effective date of this chapter, and where the subdivision of the lot is prohibited because of insufficient area and/or width (Code §154.150(E)(2) above, and where said subdivision, though the minor subdivision process, results in the existing principal buildings being situated on separate lots, and where said subdivision does not create additional building lots.

Mr. Vath stated that the provision that Mr. Lee had mentioned previously. Mr. Vath noted that it appeared that the code covered requests one and two and would be brought before the Law Director.

**Case No. 07-07:
Betty Peachy
104 N. First St.
Setback Variance
Request**

Board Members concurred to take action on variances one and two rather than tabling the case to help expedite the process for Mr. Lee.

Chairman Poff asked for further discussion. There being none the Board acted as follows:

Variance 1 Denied as submitted

Mr. Naas moved to deny a variance of 6,252 square feet to the minimum lot area noted in Code §154.122(B)(35)(a), because doing so would allow a lot area of less than the 80% required minimum of 11,000 square feet, seconded by Mr. Rodrigues. **Motion carried.** Ayes: Naas, Rodrigues, Poff, Borchers, and Wall. Nays: None.

Variance 2 Denied as submitted

Mr. Naas moved to deny a variance of 32.94 feet to the minimum lot width noted in Code §154.122(B)(35)(b), because doing so would allow a lot width of less than the 80% required minimum of 80 feet, seconded by Mr. Naas. **Motion carried.** Ayes: Naas, Rodrigues, Borchers, Poff, and Wall. Nays: None.

Variance 3 Approved as submitted

Mr. Naas moved to grant (or deny) 1.95 feet to the minimum side yard setback noted in Code §154.122(B)(35)(e) for the southern side yard setback, seconded by Mr. Rodrigues. **Motion carried.** Ayes: Naas, Rodrigues, Naas, Borchers, Wall, and Poff. Nays: None.

Variance 4 Approved as submitted

Mr. Naas moved to grant (or deny) 3.83 feet to the minimum side yard setback noted in Code §154.122(B)(35)(e) for the northern side yard setback, seconded by Mr. Rodrigues. **Motion carried.** Ayes: Naas, Rodrigues, Poff, Borchers, and Wall. Nays: None.

Case No. 07-07: Terry Blair – Buckeye Pools for Betty Peachey – Owner - 104 N. First St - Inlot: Pt. IL 2 – The applicant a variance of 10' 6" to the minimum required eastern setback of 15 feet noted in Code §154.059(D)(10)(b) for a swimming pool.

Present Zoning District: R-2 – Urban Residential Zoning District

Section(s): §154.059(D)(10)(b)

Mr. Vath stated that the applicant requested the installation of an in-ground swimming pool to the rear of the home located at 104 N. First Street. Accordingly, the following variance is required:

1. A variance of 10' 6" feet to the minimum required eastern setback of 15 feet noted in Code §154.059(D)(10)(b) for a swimming pool.

Variance #1

The proposed kidney shaped swimming pool would be 4' 6" from the rear (eastern) property line. Therefore a variance of 10' 6" is required (15' – 4' 6" = 10' 6").

Mr. Vath explained the procedural requirements to grant the variances in this case as outlined in Sections §154.175(E)(9) §154.175(C) and §154.175(D) of the Tipp City Code of Ordinances.

Mr. Vath noted the following regarding the request:

- The property had the property pins located (surveyed) in order to provide an accurate determination of the required setbacks for the

proposed pool.

- All other required setbacks will be met by the proposed pool.
- There are no easements of record on this property.

Terry Blair, President of Buckeye Pools for Betty Peachy, owner – resides at 10280 Grand Vista Drive, Dayton, Ohio – Mr. Blair stated that Buckeye Pools were custom pool builders.

Board Members found the following: A professional survey was conducted on the property; Inches of the fence encroached onto the Miami Conservancy Property and were going to be notified (37" on the southeast corner of the fence and 21" on the northeast corner of the fence); The layout of the pool was adjusted to where only one variance request would be sought after; The size of the pool was 9' x 15'; Very large pine tree on premises, not desired to remove to accommodate placement of the pool; Pool would be to made look like a pond; Pool would have a concrete apron, but did not affect the variance request.

Chairman Poff asked for further discussion. There being none, Mr. Rodrigues **moved to grant a variance of 10' 6" (eastern setback) to the minimum required setback noted in Code §154.059(D)(10)(b) for the installation of a proposed in-ground pool**, seconded by Mr. Naas. **Motion carried.** Ayes: Rodrigues, Naas, Wall, Poff, and Borchers. Nays: None.

Old Business

There was none.

Miscellaneous

There was none.

Adjournment

There being no further business, Mr. Rodrigues **moved to adjourn the meeting**, seconded by Mrs. Wall and unanimously approved. **Motion carried.** Chairman Poff declared the meeting adjourned at 8:14 p.m.

Ron Poff, Chairman

Attest: _____
Kimberly Patterson, Board Secretary